

From: [Mosley, Ferne](#)
To: [Hughley, Jeffery](#)
Cc: [Humphrey, Leslie](#); [Stoy, Alyse](#); [Borromeo, Karina](#)
Subject: Outside activities approval and guidance
Date: Tuesday, March 22, 2022 12:54:00 PM
Attachments: [Which lane are you in-official v personal capacity.pdf](#)

Hello, Jeffery: welcome to EPA! As we discussed last week, we put forward your request for approval to continue your current outside activities to the HQ Chief of Staff, Dan Utech. We advised him that the ethics rules do not prevent your participation in these activities, assuming you follow the rules that I will outline below. He has **approved** you to continue with the three activities below.

Shannon Griffo mentioned that you have another activity that you would like to have approval for and your regional ethics officials in the Regional Counsel's Office, copied above, will work with you on that request.

The EPA has a [supplemental ethics regulation](#) that requires prior approval for certain outside activities and employment. For the three activities below, we consider your prior request and the approval provided by our office and Dan Utech as meeting this requirement.

For now, here is my guidance on the original three activities and I attach a document for your reference regarding participating in official and personal activities:

1. **Kansas City Missouri Chamber of Commerce Centurions program**; leadership development program which ends in June 2022. Website link: <https://www.kcchamber.com/what-we-do-professional-development-centurions-learn-serve-lead>
 - Although some task force topics may overlap with EPA's mission, there is no specific task force for "environmental" matters. Regardless, should a matter involving the Chamber come before you at EPA during the remaining period of your participation, a recusal from such matters will be sufficient, meaning, you should not participate in an EPA matter in your official capacity in a matter pending with EPA in which the Chamber is a party or is representing a party, to include meetings with the Chamber. If you anticipate that you will need to participate in such meetings prior to the end of the program in June, please speak with the regional ethics officials so that they can determine if they can authorize you to participate using the factors in the impartiality regulation.
 - Since this program ends in June 2022, this recusal period will be short and does not appear to require you to recuse from matters that are central or critical to the performance of your official duties such that your services to the Agency will be impaired during the next few months.
2. This past February, you became a board member of a local non-profit, **Reconciliation Services** Website link: <https://www.rs3101.org/>
 - This is a local community services organization, that, according to its website, provides programs "to strategically address community needs for affordable food access, safe environments to gather to combat social isolation and build positive community connections, and increased access to social and mental health services that lead to improved health and self-sufficiency." I don't see a potential conflict with your official duties or a likely need to recuse yourself from EPA matters as I don't expect that this entity has matters pending at the Agency.
 - As a member of the board, you will have fiduciary duties which means that you have a financial interest in the organization under the federal conflict of interest law, 18 U.S.C. § 208. That means

that you may not participate in your official capacity in any matters that will have a direct and predictable effect on the organization's financial interests. Again, I don't see that matters involving this entity will come before you, but this guidance is for your awareness in the unlikely event that one does.

3. You were recently contacted regarding being nominated for membership into **Black Achievers Society of Greater Kansas City**. Website link: <https://www.blackachieverskc.org/>

- This is a local organization that is "active in the community as it works to provide annual scholarships to area high school seniors. The Society, in addition to fostering collaboration between high achieving African American business professionals who are invested in our communities, also provides leadership development exposure and scholarships to area youth." Should the organization approve your nomination, I do not anticipate any conflicts or insurmountable recusal requirements in the unlikely event that this organization comes before you in your official capacity.

General impartiality rules: you have a "covered relationship" with each of these entities during the term of your service or participation, so you may not, in your official EPA capacity, participate in a particular matter involving specific parties pending at EPA in which any of these entities is a party or is representing a party, unless you receive authorization to do so from your Deputy Ethics Official. *See generally*, 5 Code of Federal Regulations (C.F.R.) § 2635.502. I don't anticipate that these entities, with the possible exception of the Kansas City Chamber of Commerce, will have matters pending for your participation. In addition, this rule covers your former employer, the **Kansas City Police Department**, for one year after the date you last served as an employee. If you will need to participate in matters in your official capacity with this entity, it is possible for your regional ethics team to authorize your participation if certain criteria are met.

Fundraising rules: because two of these entities engage in fundraising, I want to advise you that the ethics regulations provide that you may not use your official position, e.g., your government title, or any government time or other resources, to fundraise for these organizations either in the workplace among subordinates, co-workers, or contractors. The Combined Federal Campaign is the only authorized fundraising for charitable organizations permitted in the federal workplace, so you may not solicit anyone in the workplace for charitable contributions for these or any other entity. Even away from the office, you may not solicit donations from subordinates or any person or entity known to you to have pending business before your office. *See generally*, 5 C.F.R. § 2635.808.

You may engage in fundraising on your personal time and without the use of government time or resources, to include your EPA title, email address, official letterhead, or any reference to your official title.

Use of public office for private gain: you may not use your official position or any authority associated with your official position for the benefit of any person or organization that you are affiliated with in your personal capacity. This includes the unauthorized use of non-public information or showing preferential treatment in the performance of your official duties. This includes not suggesting that the EPA or EPA officials participate in events or programs sponsored by these organizations, promoting events or engagements of your outside entities during government time or using your official position, or otherwise furthering any programs, conferences, or other events using your official position or in the workplace, or acting in an official capacity for the benefit

of these organizations. *See generally*, 5 C.F.R. § 2635.701-705.

Reference to your official title: you may only refer to your EPA title when speaking or writing in a personal capacity as one of several (at least three) pieces of biographical information, giving your EPA position no more prominence than other aspects of your professional or educational background. You may not infer or imply that the U.S. government or the EPA endorses or supports your personal activities while engaging in any outside activity. *See* 5 C.F.R. §§ 702(b) and 2635.807, respectively.

The bottom line - you must keep your personal activities separate from your work at EPA and your EPA position, and must conduct all activities on your personal time and without the use of your official title or other government resources.

If you have any questions, please let me or your Region 7 ethics team know.

Ferne L. Mosley, Attorney-Advisor

Office of the General Counsel/Ethics Office

U.S. Environmental Protection Agency

1200 Pennsylvania Ave, NW WJC Bldg, (North)

Washington, DC 20460

202-306-2998 (mobile)

202-564-8046 (desk)

WHICH LANE ARE YOU IN?	
Official Capacity (on behalf of EPA, as an employee)	Personal Capacity
<p>Generally ...</p> <ul style="list-style-type: none"> Consistent with statutory authority and Agency or office mission and assigned duties. Need supervisory approval to engage in the activity. Cannot be compensated by an outside party. <p>Use of Government Time, Resources and Non-Public Information</p> <ul style="list-style-type: none"> You can use official time on the activity, consistent with supervisory approval. You can use EPA resources including computer, copier, EPA email address or phone number, administrative support. You cannot use non-public information. <p>Identifying Yourself and Disclaimers</p> <ul style="list-style-type: none"> Use your official title. Depending on the level of review, you may need to include a disclaimer. <p>Social Media</p> <p>Relatively few employees are responsible for maintaining or using EPA's official social media posts. See EPA's policies on official use of social media.</p>	<p>Generally ...</p> <ul style="list-style-type: none"> If what you want to do qualifies as an "outside activity" under EPA's supplemental ethics rules, you may need prior written approval from an ethics official. You may not be compensated if the activity relates to official duty. <p>Use of Government Time, Resources and Non-Public Information</p> <ul style="list-style-type: none"> Refrain from engaging in personal activities on EPA time. Do not use your EPA badge, email address or other EPA identifiers when acting in your personal capacity. Personal use of the EPA equipment is permitted only in accordance with EPA's limited personal use policy, which allows for <i>de minimis</i> use, but never for prohibited activities such as charitable fundraising, lobbying, political activity, compensated outside activity or illegal activities. There is no expectation of privacy in the federal workplace or when using EPA equipment or resources. Remember, your alternate work location is considered federal workspace when you are on Flexiplace and the ethics rules apply the same when you work remotely as when you are in the office. Do not use nonpublic information, which is any information gained through EPA employment that you know or should know has not been made available to the general public, is exempt from disclosure, or that has not been authorized for release. You may not take pictures inside federal buildings (including private buildings leased by federal occupants; e.g., EPA Region 10) without the permission of the occupying Agency. 41 C.F.R. § 102-74.420.

WHICH LANE ARE YOU IN?

Official Capacity (on behalf of EPA, as an employee)	Personal Capacity
	<p>Misuse of Position and Representing Back</p> <ul style="list-style-type: none"> • Avoid appearing to misuse your EPA position for your own personal gain or for the gain of others or to create the appearance that the federal government endorses your personal activities. <i>Avoid deliberate use of your EPA position or affiliation to bolster your personal position or to lend it greater or emphasized credence.</i> For example, you could carry a sign at an event that says “I love puppies.” You could even carry a sign that says, “Federal employee loves puppies.” But you should NOT carry a sign that says “EPA employee loves puppies.” • In your personal capacity, you cannot represent the interests of a third party back to the federal government, regardless of whether you are compensated. 18 U.S.C. §§ 203 & 205. For example, you could write a letter to your Senator, expressing your personal opinion about a proposed legislative action, but you could not write and sign a letter on behalf of a third party about the same proposed action. <p>Identifying Yourself and Disclaimers</p> <ul style="list-style-type: none"> • You can reference your official title if it is one of at least three biographical details you provide and you make it clear that you are speaking in your personal capacity, not in your official capacity or on behalf of EPA. You might also need to include a disclaimer. • If you don’t mention your EPA position, you do not need to include a disclaimer. • If it is clear from the language or context of your speaking or writing that you are representing personal rather than Agency views, then you have addressed endorsement concerns, but you

WHICH LANE ARE YOU IN?

Official Capacity (on behalf of EPA, as an employee)	Personal Capacity
	<p>still must be careful not to use your EPA position for private gain. See Misuse of Position, above, and OGE letter 10 x 1.</p> <p>Social Media</p> <ul style="list-style-type: none"> • The ethics rules apply to social media just as they do to other forms of communication. • Because there is no expectation of privacy in the federal workplace or when using EPA equipment or resources, <i>we recommend against using EPA equipment, server, etc. to access personal social media accounts.</i> • Do not use or post nonpublic information in personal social media accounts. • Because you are generally prohibited from taking photos inside federal office space, you, therefore also should not post such photos to your personal social media accounts. • The Office of Government Ethics has a terrific legal advisory on ethics and personal use of social media. <p>Fundraising</p> <ul style="list-style-type: none"> • Don't use your EPA position to further outside fundraising efforts. There are some restrictions when engaged in fundraising, even on personal time. 5 C.F.R. § 2635.808. • You can't ever personally solicit funds from a subordinate or from a "prohibited source," which is any entity or person who is doing business with EPA, seeks to do business with EPA or is regulated by EPA.